

STATE OF MICHIGAN
COURT OF APPEALS

MALCOLM JESSUP,

Plaintiff-Appellant,

v

DEPARTMENT OF AGRICULTURE,

Defendant-Appellee.

UNPUBLISHED

November 27, 2001

No. 225141

Court of Claims

LC No. 99-017325-CM

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this contract action, plaintiff, a former state civil service employee, claims that the court of claims erred in granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction) and (8) (failure to state a claim on which relief can be granted). Upon de novo review, *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998), we conclude that summary disposition was properly granted pursuant to MCR 2.116(C)(4).

Plaintiff argues, in essence, that summary disposition was inappropriate because he had a contract cause of action against defendant and that exhausting administrative remedies would have been futile. Plaintiff also contends that even if the court of claims had no subject matter jurisdiction as defendant argues, plaintiff's claim, which was dismissed with prejudice, should have been dismissed without prejudice.

Plaintiff attempts to initiate an original cause of action in the court of claims despite the fact that the terms and conditions of his employment were subject to the exclusive and plenary authority of the Civil Service Commission. Const 1963, art 11, § 5; *James v Dep't of Mental Health*, 145 Mich App 229, 232; 377 NW2d 824 (1985). The court of claims lacked subject matter jurisdiction. *James, supra* at 232-233. Plaintiff is correct in arguing that if the court of claims lacked subject matter jurisdiction, then the grant of summary disposition pursuant to MCR 2.116(C)(8) is void. "When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void." *Daniels v Peterson*, 462 Mich 915, 917; 615 NW2d 14 (2000), quoting *Fox v Board of Regents of Univ of Mich*, 375 Mich 238; 134 NW2d 146 (1965).

In sum, summary disposition pursuant to MCR 2.116(C)(4) is affirmed. However, dismissal should have been without prejudice. See MCR 2.504(B)(3); *In re Quinney's Estate*,

287 Mich 329, 338-339; 283 NW 599 (1939). Further, the court of claims had no jurisdiction to enter summary disposition pursuant to MCR 2.116(C)(8). Accordingly, we vacate the court of claims' previous order dismissing the case with prejudice and remand for entry of an order dismissing the case pursuant to MCR 2.116(C)(4), without prejudice.

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Jane E. Markey